



**Rule and Interpretive/Policy Statement Review Checklist**  
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title) and date last issued:

- AD 8108.1 Merchandise returns with restocking charge Mar. 15, 1984
- AD 8122.1 Feed purchased by cattle auction businesses Oct. 12, 1987
- AD 8143.1 Intermediate steps in a printing process—Publishers Dec. 3, 1987
- AD 8144.1 Printing plates – ETB's 417 and 456 Feb. 10, 1984
- AD 8144.2 Silk screen printing process Oct. 13, 1988
- AD 8146.1 Loan set up fees Aug. 20, 1984
- AD 8146.3 Gains and losses on futures contracts Dec. 2, 1987
- AD 8146.5 Interest from sales of real estate Jun. 30, 1987
- AD 8156.1 Special charges related to escrows May 5, 1987
- AD 8168.1 Retirement homes Dec. 31, 1984
- AD 8171.1 Value of rock from state or federal pits Nov. 3, 1987
- AD 8171.2 Paving cuts Nov. 4, 1987
- AD 8177.1 WAC 458-20-177 Out of state affidavits Mar. 3, 1986
- AD 8178.1 Use tax value of equipment used temporarily in Washington Nov. 3, 1987
- AD 8178.2 Appliances used for demonstration Jul. 31, 1986
- AD 818801.1 Audits of the medical industry Mar. 19, 1991
- AD 8193A.1 ETB 527—Merchandise pickup out of state Dec. 3, 1987
- AD 8193A.2 Interstate sales and deliveries May 1, 1990
- AD 8193A.3 Manufacturing tax prior to June 1, 1987 Aug. 23, 1988
- AD 8233.1 Medical service bureaus—Deferred compensation Apr. 26, 1985
- AD 8251.2 Drainage utility charges Oct. 21, 1988

Reviewer: **Cindy Evans**

Date review completed: **June 26, 2002**

Briefly explain the subject matter of the document(s):

**The 8000 series of Audit Directives were issued to provide guidance to Audit field personnel regarding various interpretive or policy issues.**

**Various audit directives have been reviewed in conjunction with rules that addressed related issues. This review takes a comprehensive look at all 8000 series Audit Directives as of the date of this review, as reflected in the database for TAXPEDIA (a search engine available for use by the public and Department personnel via the Internet).**



**To reduce redundancy, the specific subject matter addressed by each of these directives is identified in Section 2 of this review document.**

Type an “X” in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If “yes,” provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Need:**

YES	NO	
X	X	Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
X		Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
	X	Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)

Please explain.

**There is no longer any need to retain the following documents, as the information is either obsolete or addressed in other documents issued by the Department. Specifically:**

**AD 8122. 1 Feed purchased by cattle auction businesses**

This directive explains that because of a 1985 law change, custom feedlot operators may purchase feed at wholesale and are exempt from B&O tax irrespective of whether they charge the livestock owner separately for the cost of feed. Chapter 118, Laws of 2001, and Det. 87-266, 4 WTD 007 (1987) provide sufficient guidance to determine the tax consequences of this activity.

**AD 8143.1 Intermediate steps in a printing process--Publishers**

This directive notes that ETB (now ETA) 417.12.144 (Printing industry – Use tax on consumable materials and supplies) and 456.08.143 (Taxability of print shops - Plate production and printing charges) provide tax-reporting information for printers regarding products manufactured and used during intermediate steps in a printing process. The



directive notes that the Department was in 1987 reviewing the appropriateness of expanding this tax treatment to publishers who may not perform any printing activity.

This issue was settled some time ago and the directive is no longer needed. Publishers are entitled to the same treatment as printers with respect to products purchased for use in a printing process. ETA 456 provides in part that a “publisher, printers, and trade shops which purchase or produce such items are liable for use tax thereon measured by the value of the materials. This is because these materials do not become a component part of the printed article sold and are put to an intervening use by the printer.”

#### **AD 8144.2 Silk screen printing process**

This directive explains that the intermediate steps in a silk-screen printing process are similar to those used in other more conventional printing processes, and subject to the tax-reporting instructions provided in ETA 417.12.144 (Printing industry—Use tax on consumable materials and supplies) and 456.08.143 (Tax liability of print shops—Plate production and printing charges). It also explains that persons producing silk-screen products and selling the same outside the state incur a manufacturing B&O tax liability. This directive is no longer needed. Det. 92-352, 12 WTD 509 (1992), and Det. 88-351, 6 WTD 371 (1988), sufficiently address these issues.

#### **AD 8146.1 Loan set up fees**

This directive explains that loan set-up fees that represent an adjustment to yield will be considered interest income for tax purposes. This directive is no longer needed. This issue is addressed more completely in subsequent published determinations (e.g., Det. 89-280, 7 WTD 375 (1989) and Det. 99-241, 19 WTD 295 (1999)).

#### **AD 8146.3 Gains and losses on futures contracts**

This directive explains that losses from futures contracts should not be used to offset gains. This information is outdated and incorrect. Det. 90-63, 9 WTD 107 (1990) provides sufficient information on this subject and explains that futures contract gains may be offset by losses.

#### **AD 8146.5 Interest from sales of real estate**

This directive explains that the deduction for interest earned on loans secured by a first mortgage or trust deed on nontransient residential property may not be claimed for interest derived from real estate sales contracts. This information is accurate, but the directive is no longer needed. This issue is sufficiently addressed in subsequent published determinations of the Department (e.g., Det. 93-023, 12 WTD 575 (1993)).

#### **AD 8156.1 Special charges related to escrows**

This directive explains that consistent with the holding in Det. 87-100, 2 WTD 433 (1987), charges by escrow businesses to complete a federal information return are retail sales. This information is no longer needed.

#### **AD 8171.1 Value of rock from state or federal pits**

This directive explains that ETB 11 provides values of rock removed from city or county-owned rock pits to be used to determine use tax liability. The directive notes that the ETB values are not to be used for rock taken from federal or state owned pits for uses such as logging road construction. It then identifies values for crushed aggregate and



bank run rock based on a review of records maintained by DOT and DNR several years prior to issuance of the directive. These figures were to be used to determine for use tax purposes the value of materials removed from federal or state-owned pits when the contractor was not charged for the materials. The information provided in this directive is out of date. ETB 11 was canceled in 1990. RCW 82.12.010(1)(a) (defining “value of article used”), WAC 458-20-178 (Use tax), and WAC 458-20-13501 (Timber harvest operations) all provide guidance as to determining the measure of use tax.

#### **AD 8178.2 Appliances used for demonstration**

This directive explains under what circumstances use tax applies to appliances used for demonstration purposes. This directive is no longer needed as this issue is sufficiently addressed in ETA 332.12.178.

#### **AD 818801.1 Audits of the medical industry**

This directive to provide interim tax policy guidance in some general areas related to the medical industry. It primarily provides guidance regarding the taxability of delivery systems, dual purpose systems, prosthetic and orthotic devices, prepackaged kits, and reagents. The issues addressed in this directive are currently addressed in either WAC 458-20-18801 or other published determinations of the Department, including but not limited to Det. 91-077 11 WTD 095, Det. 91-261 11 WTD 439, Det. 91-261S, 12 WTD 023, and Det. No. 92-164, 12 WTD 205.

#### **AD 8193A.1 ETB 527—Merchandise pickup out of state**

#### **AD 8193A.2 Interstate sales and deliveries**

#### **AD 8193A.3 Manufacturing tax prior to June 1, 1987**

- AD 8193A.1 clarifies the conditions under which tax-reporting information provided in ETB 527 (subsequently ETA 527) applies.
- AD 8193A.2 clarifies interim instructions provided by Revenue Policy Memorandum (RPM) No. 89-1 regarding the taxability of interstate sales and deliveries.
- AD 8193A.3 was issued to explain how the Department will proceed with respect to applying the manufacturing B&O tax for periods prior to June 1, 1987 in light of the United States Supreme Court ruling in National Can Corp. v. Department of Rev., 109 Wn.2d 878 (1988), cert. den., 486 U.S. 1040, 108 S.Ct. 2030 (1988).

The information in these directives no longer has any application. ETA 527 was cancelled in 1999. RPM 89-1 was cancelled in 1992. The information provided in AD 8193A.3 addresses transactions outside the statutory claim period provided by RCW 82.32.050.

#### **AD 8233.1 Medical service bureaus—Deferred compensation**

This directive explains the tax treatment of income deferred by a physician through a deferred compensation plan sponsored by a medical service bureau. This directive provides inaccurate information and is no longer needed. Tax-reporting instructions for deferred compensation plan sponsoring medical service bureaus and their member physicians are explained in Det. 89- 467, 8 WTD 247 (1989).



#### **AD 8251.2 Drainage utility charges**

This directive explains that the income derived from drainage utility charges is subject to the service and other activities B&O tax classification. This directive is no longer needed as this issue is addressed in Det. 98-208, 19 WTD 332 (2000).

The following documents should be retained until the subject matter is addressed in another document issued by the Department.

#### **AD 8108.1 Merchandise returns with restocking charge**

This directive explains that as a result of the Thurston County Superior Court decision in *Halton Tractor*, Cause No. 83-2-00595-4, a return of merchandise to a seller will be treated as a sales return/refund instead of a repurchase, even if the full amount paid by the buyer is not refunded because the seller charges a restocking fee. This directive also explains that the restocking fee charged by the seller is subject to the service and other activities B&O tax.

#### **AD 8144.1 Printing plates – ETB's 417 and 456**

This directive notes that the Department had recently (to the February 10, 1984, issuance date) taken the position that “the manufacturing of a printing plate by a person who also uses that plate is not a taxable manufacturing activity.” This directive further provides that it should be noted that under the provisions of ETBs (predecessor to ETAs) 417 and 456 printers can purchase complete printing plates with sales or use tax due only on the value of the materials. This directive provides that in the case of such purchases, it is “appropriate until further notice to consider 15% of the total cost of printing plates and similar items used by the printers as being the taxable value subject to sales or use tax.” Further, if a printer can factually support a figure of less than 15% then that figure may be used.

#### **AD 8168.1 Retirement homes**

This directive provides the following information/instructions to Audit Division personnel regarding retirement homes (an undefined term):

- Auditors should in the course of an audit examination obtain a copy of contracts/rental agreements used by retirement homes. These agreements are to be evaluated to verify whether the rental of living quarters constitutes the rental of real estate. If so, then B&O tax does not apply to the charge for living quarters. Service B&O tax applies if the resident does not receive exclusive control over the living quarters.
- Retirement homes will not be considered to be engaged in the business of selling meals if meals are furnished to the residents. However, this document provides no further explanation regarding any potential B&O tax liability, though it notes that sales tax applies to the purchase of food items consistent with WAC 458-20-244 (Food products).
- It also needs to be determined if the resident receives nursing care or similar services in connection with the charges being made.

#### **AD 8171.2 Paving cuts**

This directive clarifies the application of tax to persons making paving cuts as part of a project to install water or telephone lines within a city or county road right of way. It



explains that a contractor merely repairing the road after the pipe or line is installed by another is subject to the public road construction B&O tax. A contractor hired to perform the entire project by a consumer is making a retail sale, in which case the contract may not be bifurcated to treat a portion of the contract as public road construction.

**AD 8177.1 WAC 458-20-177 Out of state affidavits**

This directive notes that WAC 458-20-177 (Sales of motor vehicles, campers, and trailers to nonresidents) indicates that automobile dealers are required to attach a copy of the out-of-state affidavit taken to document a tax-exempt sale with the excise tax return covering the period in which the sale occurred. The directive then explains that filing this affidavit with the return is no longer required.

**AD 8178.1 Use tax value of equipment used temporarily in Washington**

This directive explains that the law provides that equipment brought into the state for non-transitory business use by a nonresident for less than 90 days within a 365 day period is subject to use tax only to the extent of the equipment's fair rental value. It notes that such a value can be difficult to determine because of the nature of the equipment, and that an appropriate value to apply would be the monthly depreciation (straight-line and not an accelerated method) plus 1% of the purchase cost of the equipment/provides a method for determining an appropriate value.

**3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:**

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
		Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
X		Should this interpretive or policy statement be incorporated into a rule?
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?





	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?
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If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**The issues addressed in AD 8108.1, 8144.1, 8168.1, 8171.2, 8177.1, and 8178.1 should at some future date be addressed in another document. Candidates include Rules 108 (Returned goods, allowances, cash discounts), 144 (Printing industry), 168 (Hospitals, medical care facilities, and adult family homes), 171 (Building, repairing . . . roads . . . owned by a municipal corporation or political subdivision of the state . . . ), 177 (Sales of motor vehicles . . . to nonresidents), and 178 (Use tax), respectively.**

#### 4. Clarity and Effectiveness:

YES	NO	
		Is the document written and organized in a clear and concise manner?
		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
		Do changes in industry practices warrant repealing or revising this document?
		Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

#### 5. Intent and Statutory Authority:

YES	NO	
		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
		Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.



**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
		Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
		Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
		Does the document result in equitable treatment of those required to comply with it?
		Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
		Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**9. LISTING OF DOCUMENTS REVIEWED:** Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):





Appeal Division Decisions (WTDs):

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

#### 10. Review Recommendation:

<input type="checkbox"/>	<b>Amend</b>
<input checked="" type="checkbox"/>	<b>Repeal/Cancel</b> (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
<input checked="" type="checkbox"/>	<b>Leave as is</b> (Appropriate even if the recommendation is to incorporate the current information into another rule.)
<input type="checkbox"/>	<b>Begin the rule-making process for possible revision.</b> (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

**AD 8108.1, 8144.1, 8168.1, 8171.2, 8177.1, and 8178.1 should be retained until such time as the subject matter is addressed elsewhere. The remaining Audit Directives identified should be canceled because the information is no longer needed or relevant.**

**Maintenance of the Audit Directive series appears to have been abandoned some time ago. The Department does not appear to have issued a directive on or after June 6, 1996, which is the effective date of RCW 34.05.230's requirement that state agencies announce the adoption of interpretive and/or policy statements in the Washington State Register (WSR). The Department has been formally announcing (in the WSR) the cancellation of audit directives that have been identified as obsolete or in error in conjunction with its review procedures implementing Executive Order 97-02 (issued March 25, 1997). However, the reviewer was unable to find any formal process or record documenting the issuance or cancellation of directives prior to these dates.**

**For these reasons, when announcing the cancellation of the ETAs reviewed here in the Washington State Register the Department should explain that with the exception of the five directives noted above, this action effectively cancels the entire 8000 series. This will**



**eliminate potential confusion should any paper copies of/references to old, forgotten, canceled, or drafted-but-not-issued directives exist somewhere.**

**11. Manager action:**    Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

\_\_\_\_\_ 1  
\_\_\_\_\_ 2  
\_\_\_\_\_ 3  
\_\_\_\_\_ 4